

Minutes of Meeting

VIRGINIA REAL ESTATE BOARD INFORMAL FACT-FINDING CONFERENCES DECEMBER 17, 2003 (9:00 AM)

The Virginia Real Estate Board convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

R. Schaefer Oglesby, Presiding Board Member and Herman Key, Jr., Assisting Board Member. No other Board members were present.

Douglas W. Schroder appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Lic=Licensing Application
Disc=Disciplinary Case

A=Applicant
C=Complainant/Claimant
R=Respondent/Regulant
AT=Attorney
O=Owner
PB=Principal Broker
SA=Sales Agent
I=Investigator
W=Witness

Participants

1. Patricia Lynn Kahut
File Number 2004-02359 (Lic) Kahut – A
2. Sye L. Daniel
File Number 2004-00063 (Disc) Daniel – R
Deirdre M. Portwood – C
Betty Reitmeier - W
Randy Jones – PB
Jack Daniel – O
Kevin Hoeft – I
3. Raymond Louis Nicar, Jr.
File Number 2004-01709 (Disc) Raymond Nicar, Jr. – R

COPY TESTE:

Custodian of Records

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
REAL ESTATE BOARD**

**RE: PATRICIA LYNN KAHUT
APPLICATION**

FILE NUMBER: 2004-02359

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Patricia Lynn Kahut on December 12, 2003. The following individuals participated at the conference: Patricia Lynn Kahut, Applicant; Douglas W. Schroder, Staff Member; and R. Schaefer Oglesby, presiding Board Member.

Summation of Facts

1. Patricia Lynn Kahut (Kahut) applied for a real estate salesperson's license by reciprocity on November 25, 2003, and disclosed a previous disciplinary action on her application.
2. On March 22, 1999, the Oregon Real Estate Agency issued an Order of Suspension against Kahut, suspending her real estate salesperson's license, pursuant to Oregon Revised Statutes 348.393 to Oregon Revised Statutes 348.399, for failure to pay her student loan in a satisfactory manner.
3. On May 21, 1999, the Oregon Real Estate Agency received a letter from the Oregon State Scholarship Commission, stating that Kahut had brought her

student loan account into a satisfactory repayment status and was eligible to have her license reinstated.

4. On May 24, 1999, the suspension of Kahut's real estate salesperson's license was terminated and her license reinstated.

5. Kahut has been licensed as a real estate broker, in the state of Oregon, since December 6, 1993.

Conclusion and Recommendation

Based upon the record and information presented at the conference, I recommend Kahut's application be approved.

By: _____

R. Schaefer Oglesby
Presiding IFF Board Member
Real Estate Board

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
REAL ESTATE BOARD**

RE: SYE L. DANIEL
LICENSE NUMBER: 0225 041435

FILE NUMBER: 2004-00063

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Sye L. Daniel on November 13, 2003. The following individuals participated at the conference: Sye L Daniel, Respondent; Randy Jones and Jack Daniel, Witnesses for the Respondent; Deirdre M. Portwood, Complainant; Betty Reitmeier and David Wiggins, Complainant's Witnesses; Douglas W. Schroder, Staff Member; R. Schaefer Oglesby, Presiding Board Member and Herman Key, Jr., Assisting Board Member.

Summation of Facts

1. On April 10, 2003, Sye L. Daniel (Daniel) of Daniel and Daniel Realty Inc. sent an e-mail from his real estate firm's computer to Deirdre M. Portwood (Portwood) at her real estate firm containing obscene language.
2. Daniel was convicted in Colonial Heights General District Court on June 9, 2003, of violating § 18.2-152.7:1 of the Code of Virginia, a Class 1 Misdemeanor.
3. During the IFF, Daniel stated that he was "messing around...venting" with the email and did not mean to send it. Daniel stated that he was angry because of how Portwood treated his mother relating to a real estate transaction.
4. Betty Reitmeier testified that the email frightened the female agents in the firm, due to the content of the email, and they felt that they were in danger.

Conclusion and Recommendation

Count 1: 18 VAC 135-20-260(11) (Effective Date April 1, 2003)

Daniel's actions of sending an email containing obscene language to Portwood is engaging in improper conduct, in violation of the Board's 2003 Regulation 18 VAC 135-20-260(11). We find that Daniel's actions are totally unacceptable and reflect badly on the profession of real estate, even if this was an "accident". We feel that Daniel will not repeat this type of rash, immature action, when angry. Therefore, we recommend that a monetary penalty of \$750.00 be imposed for a violation of the regulation.

By: _____

R. Schaefer Oglesby
Presiding IFF Board Member
Real Estate Board

Date: _____

By: _____

Herman Key, Jr.
Assisting IFF Board Member
Real Estate Board

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0225 041435 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

REAL ESTATE BOARD

**RE: RAYMOND LOUIS NICAR, JR.
LICENSE NUMBER: 0225 057166**

FILE NUMBER: 2004-01709

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to

Raymond Louis Nicar, Jr. on November 14, 2003. The following individuals participated at the conference: Raymond Louis Nicar, Respondent; Douglas W. Schroder, Staff Member; and R. Schaefer Oglesby, Presiding Board Member and Herman Key, Jr., Assisting Board Member.

Summation of Facts

1. On August 16, 2001, in the Circuit Court of the City of Suffolk, Raymond Louis Nicar, Jr. (Nicar) was convicted of Unlawful Wounding, a felony, in violation of § 18.2-51. On February 1, 2002, the court sentenced Nicar to serve 3 years in prison, suspended, and placed him on probation for 3 years.
2. Nicar did not notify the Board of his conviction until October 2003, when he submitted an Activate/Transfer Application.
3. During the IFF, Nicar testified that the incident resulted from a disagreement between his girlfriend and himself. Nicar stated that he decided to smoke a cigarette in the home they shared, even though he and his girlfriend had an agreement that he would not smoke in that home. Nicar's girlfriend opened both the back and front doors to clear out the cigarette smoke. Nicar stated that he closed the doors and she reopened them. The weather, at the time of this incident, was very cold and windy. Nicar stated that he pushed her away from the front door to close it, causing his girlfriend to fall down the front steps, which he did not realize had happened until the police showed up at his home. Nicar thought his girlfriend had gone to the neighbors, due to their disagreement.

Conclusion and Recommendation

Count 1: 18 VAC 135-20-260(5) (Effective January 1, 1999)

Nicar's actions of having been convicted of a felony, constitutes unworthy and incompetent behavior, in violation of the Board's 1999 Regulation 18 VAC 135-20-260(5). Nicar was extremely remorseful that this accident occurred. Therefore, we recommend that a monetary penalty of \$100.00 be imposed for a violation of the regulation.

Count 2: 18 VAC 135-20-260(6) (Effective January 1, 1999)

Nicar's failure to inform the Board in writing within 30 days of being convicted of a felony is a violation of the Board's 1999 Regulation 18 VAC 135-20-260(6). Nicar's license was inactive and had never been active in real estate at the time of this incident. We believe that Nicar's lack of reporting this was in no way intentional. Therefore, we recommend that a monetary penalty of \$100.00 be imposed for a violation of the regulation.

By: _____

R. Schaefer Oglesby
Presiding IFF Board Member
Real Estate Board

Date: _____

By: _____

Herman Key, Jr.
Assisting IFF Board Member
Real Estate Board

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0225 057166 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

REAL ESTATE BOARD

**RE: TOMMY RAY DEWITT
LICENSE NUMBER: 0225 033016**

FILE NUMBER: 2002-03037

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Tommy Ray DeWitt on November 14, 2003. The following individuals participated at the conference: Tommy Ray DeWitt, Respondent and Richard M. Livingston, his Attorney; Don & Maggie Talley, Complainants; Sandra Grogan, Witness; Douglas W. Schroder, Staff Member; R. Schaefer Oglesby, Presiding Board Member and Herman Key, Jr., Assisting Board Member.

Summation of Facts

1. On or about December 16, 2000, Donald B. and Maggie Talley (the Talleys), as Purchasers, and Ivy Creek Associates, by Tommy Ray Dewitt as Partner, as Sellers, entered into a Virginia Association of Realtors Residential Contract of Purchase through Tom Dewitt, Inc., by Tina Friar, as Listing Agent, and Tom Dewitt, Inc., by Sandra Grogan (Grogan), as purchaser's representative, for property known as Lot 7 Woodbridge Court in Bedford, Virginia.
2. Tommy Ray DeWitt is licensed by the Virginia Real Estate Board as a Principal Broker, license number 0225 033016. At the time of the sales transaction, DeWitt was licensed as a Broker, and was a Partner in the General Partnership, Ivy Creek Associates. DeWitt did not disclose his license status in writing in the Purchase Contract.
3. The closing occurred on or about January 19, 2001.
4. Located on Lot 7, is the drainfield easement for Lot 8. The Talleys were never informed by DeWitt or Grogan of the existence of the additional drainfield easement on their property.
5. All plats, restrictions, and septic layouts for subdivisions being developed, purchased, built on, etc., through Tom DeWitt, Inc. are hung on the wall of the firm. The plat which contains Lot 7 shows that the drainfield for Lot 8 is located on Lot 7. Grogan and DeWitt were aware of the plats on the wall during the sales negotiations, however did not discuss the plat with the Talley's. DeWitt, the Seller, assumed "that Sandra Grogan would have given the Talley's a copy of the plat from the office wall."
6. On or about December 16, 2000, the Talleys, as Purchasers, and Ivy Creek Associates, by Dewitt as Partner, as Sellers, entered into a Virginia Association of Realtors Residential Contract of Purchase through Tom Dewitt, Inc., by Tina Friar, as Listing Agent, and Tom Dewitt, Inc., by Grogan, as purchaser's representative, for property known as Lot 7 Woodbridge Court in Bedford, Virginia.

7. Tom Dewitt, Inc., and its salespersons acted on behalf of the seller and the purchaser as dual representatives.

Conclusion and Recommendation

Count 1: 18 VAC 135-20-210(B) (Effective Date January 1, 1999)

DeWitt's failure to disclose his license status in writing in the written offer to purchase, is a violation of the Board's 1999 Regulation 18 VAC 135-20-210(B). We recommend that no monetary penalty be imposed for violation of this regulation. The Tallys testified that they knew that DeWitt had an ownership interest in the subdivision.

Count 2: Section 54.1-2131(B) of the Code of Virginia

DeWitt's failure to disclose, as Principal Broker for the Listing Firm and as the Seller of the Property, the existence of the additional drainfield on the purchaser's property is a violation of § 54.1-2131(B) of the Code of Virginia. Therefore, we recommend that a monetary penalty of \$300.00 be imposed for a violation of the regulation.

Count 3: Section 54.1-2139(A) and 54.1-2139 (B) of the Code of Virginia

Dewitt's failure, as the Principal Broker representing both parties to the transaction, to disclose the firm's status as a dual representative and obtain the written consent of all clients to the transaction, is a violation of § 54.1-2139(A) and (B) of the Code of Virginia. The Tallys testified that they were aware of the dual agency status, therefore, we recommend that a monetary penalty of \$75.00 be imposed for a violation of the regulation.

By: _____

R. Schaefer Oglesby
Presiding IFF Board Member
Real Estate Board

Date: _____

By: _____

Herman Key, Jr.

Assisting IFF Board Member
Real Estate Board

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0225 033016 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

REAL ESTATE BOARD

**RE: SANDRA C. GROGAN
LICENSE NUMBER: 0225 041279**

FILE NUMBER: 2003-00266

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Sandra C. Grogan on November 14, 2003. The following individuals participated at the conference: Sandra C. Grogan, Respondent and Richard M. Livingston, her Attorney; Don & Maggie Talley, Complainants; Tommy Ray DeWitt, Witness; Douglas W. Schroder, Staff Member; R. Schaefer Oglesby, Presiding Board Member and Herman Key, Jr., Assisting Board Member.

Summation of Facts

1. On or about December 16, 2000, Donald B. and Maggie Talley (the Tallys), as Purchasers, and Ivy Creek Associates by Tommy R. DeWitt (DeWitt) as Partner, as Sellers, entered into a Virginia Association of Realtors Residential Contract of Purchase through Tom DeWitt, Inc., by Tina Friar, as Listing Agent, and Tom DeWitt, Inc., by Sandra Grogan (Grogan), as purchaser's representative, for property known as Lot 7 Woodbridge Court in Bedford, Virginia.
2. DeWitt is licensed by the Virginia Real Estate Board as a Principal Broker, license number 0225 033016. At the time of the sales transaction, DeWitt was licensed as a Broker, and was a Partner in the General Partnership, Ivy Creek Associates.
3. Closing occurred on or about January 19, 2001.
4. All plats, restrictions, and septic layouts for subdivisions being developed, purchased, built on, etc., through Tom DeWitt, Inc. are hung on the wall of the firm. The plat which contains Lot 7 shows that the drainfield for Lot 8 is located on Lot 7.
5. Grogan and DeWitt were aware of the plats on the wall during the sales negotiations, however did not discuss the plat with the Talleys. DeWitt, the Seller, assumed "that Sandra Grogan would have given the Talleys a copy of the plat from the office wall."
6. Tom DeWitt, Inc., and its salespersons acted on behalf of the seller and the purchaser as dual representatives.

Conclusion and Recommendation

Count 1: Section 54.1-2132(A)(4) of the Code of Virginia

Grogan's failure, as an agent representing the Buyer, to disclose the existence of the additional drainfield on the purchaser's property, is a violation of § 54.1-2132(A)(4) of the Code of Virginia. Grogan testified that the Talley's asked for a copy of the plat of the property and she assured them that she would provide one when they returned to the office, however, she forgot to do that. Therefore, we recommend that a monetary penalty of \$800.00 be imposed for a violation of the regulation.

Count 2: Sections 54.1-2139(A) and 54.1-2139(B) of the Code of Virginia

Grogan's failure, as the agent representing the buyer, to disclose the firm's status as a dual representative and obtain the written consent of all clients to the transaction, is a violation of § 54.1-2139(A) and (B) of the Code of Virginia. The Tallys testified that they were aware of the dual agency status, therefore, we recommend that a monetary penalty of \$75.00 be imposed for a violation of the regulation.

By: _____

R. Schaefer Oglesby
Presiding IFF Board Member
Real Estate Board

Date: _____

By: _____

Herman Key, Jr.
Assisting IFF Board Member
Real Estate Board

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0225 041279 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

REAL ESTATE BOARD

**RE: KATHLEEN MARIE KENNEDY
APPLICATION**

FILE NUMBER: 2004-01919

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Kathleen Marie Kennedy on November 13, 2003. The following individuals participated at the conference: Kathleen Marie Kennedy, Applicant; Catherine Mussett, Witness; Douglas W. Schroder, Staff Member; R. Schaefer Oglesby, Presiding Board Member; and Herman Key, Jr., Assisting Board Member.

Summation of Facts

1. Kathleen Marie Kennedy (Kennedy) applied for a real estate broker's license by examination on or about October 28, 2003, and did not meet the experience verification requirements on her application.
2. On or about November 7, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding Conference Referral Memorandum, which states the reasons the license was not issued.
3. During the IFF, Kennedy testified that she grew up in the business, as her mother was a real estate broker and had her own company. Kennedy obtained her real estate salesman license in 1988 and was licensed until 1996. She re-entered the real estate business and was re-licensed in 2002. Since that time, she has had a very successful real estate career as evidenced by numerous letters and her testimony.

Conclusion and Recommendation

Based upon the record and the information presented at the IFF, we recommend Kennedy's application for a broker's license be approved, contingent upon Kennedy entering into an Agreement for Licensure. Kennedy would be issued an associate broker's license to be placed under the supervision of a principal broker until September, 2005.

By: _____

R. Schaefer Oglesby
Presiding IFF Board Member
Real Estate Board

Date: _____

By: _____

Herman Key, Jr.
Assisting IFF Board Member
Real Estate Board

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

REAL ESTATE BOARD

**RE: DOLORES S. BUJALSKI
APPLICATION**

FILE NUMBER: 2004-01918

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Dolores S. Bujalski on November 13, 2003. The following individuals participated at the conference: Dolores S. Bujalski, Applicant; Jo Miller, Witness; Maryann Woo, Staff Member; Douglas W. Schroder, Staff Member; R. Schaefer Oglesby, Presiding Board Member; and Herman Key, Jr., Assisting Board Member.

Summation of Facts

1. Dolores S. Bujalski (Bujalski) applied for a real estate broker's license by examination on or about June 3, 2003, and did not meet the experience verification requirements on her application.

2. On or about November 7, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding Conference Referral Memorandum, which states the reasons the license was not issued.

3. During the IFF, Bujalski testified that she understood that she had a responsibility herself to see that she had an active license. It appears that her license went inactive because of a failure of Jobin Realty to activate her license in July of 1998. However, when she transferred to Henderson Realty in January of 2000, her license was still not activated. In 2000, she also failed to meet the educational requirements. It was only in March of 2000, that it was discovered that her license was inactive when she transferred to Avery-Hess Realtors, Inc.

Conclusion and Recommendation

Based upon the record and information presented at the IFF, we recommend Bujalski's application be denied because she does not meet the requirement of being active in the real estate business for 36 of the last 48 months.

By: _____

R. Schaefer Oglesby
Presiding IFF Board Member
Real Estate Board

Date: _____

By: _____

Herman Key, Jr.
Assisting IFF Board Member
Real Estate Board

Date: _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
REAL ESTATE BOARD**

**RE: MARY K. BRADY
LICENSE NUMBER: 0204 022163
FILE NUMBER: 2003-01095**

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Mary K. Brady, on November 25, 2003. The following individuals participated at the conference: Douglas W. Schroder, Staff Member; R. Schaefer Oglesby, Presiding Board Member; and Herman Key, Jr., Assisting Board Member. Neither Brady, nor anyone on her behalf, appeared at the IFF.

Summation of Facts

1. On April 23, 2002, in the Circuit Court of the City of Chesapeake, Mary K. Brady (Brady) was convicted of 2 counts Utter Counterfeit Check, a felony, in violation of § 18.2-170, and 2 counts Obtain Money by False Pretense, a felony, in violation of § 18.2-178. On June 13, 2002, the court sentenced Brady to serve 3 years in prison on each charge for a total of 12 years, but suspended all 12 years conditioned on Brady serving 30 days in the Chesapeake City Jail. Brady was also ordered to make restitution in the amount of \$15,379.92.
2. Brady did not notify the Board of her conviction until October 2002 when she submitted an Activate/Transfer Application

Conclusion and Recommendation

Count 1: 18 VAC 135-20-260(5) (Effective January 1, 1999)

Brady's actions of having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed is a violation of Board Regulation 18 VAC 135-20-260(5). Therefore, we recommend license revocation be imposed.

Count 2: 18 VAC 135-20-260(6) (Effective January 1, 1999)

Brady's failure to inform the board in writing within 30 days of her conviction is a violation of Board Regulation 18 VAC 135-20-260(6). Therefore, we recommend a monetary penalty of \$400.00 and license revocation be imposed.

By: _____

R. Schaefer Oglesby
Presiding IFF Board Member
Real Estate Board

Date: _____

By: _____

Herman Key, Jr.
Assisting IFF Board Member
Real Estate Board

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0204 022163 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

COMMONWEALTH OF VIRGINIA DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE BOARD

**RE: KONSTANDENOS S. BAZIANOS
APPLICATION**

FILE NUMBER: 2004-01921

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Konstandenos S. Bazianos on November 13, 2003. The following individuals participated at the conference: Konstandenos S. Bazianos, Applicant; Jack E. Kotvas, Attorney for Applicant; Douglas W. Schroder, Staff Member; R. Schaefer Oglesby, Presiding Board Member; and Herman Key, Jr., Assisting Board Member.

Summation of Facts

1. Konstandenos S. Bazianos (Bazianos) applied for a real estate broker's license by reciprocity on or about October 6, 2003, and did not meet the experience verification requirements on his application.
2. On or about November 7, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding

Conference Referral Memorandum, which states the reasons the license was not issued.

3. During the IFF, Bazianos presented testimony and extensive evidence relating to his real estate related experience. He has been licensed as a broker in Illinois since March, 2002 and he has also been licensed to practice law in Illinois for over 12 years with a concentration in real estate. He is currently working for LandAmerica as Vice President of Corporate Real Estate Services. He is proposing to have his broker's license with Global Corporate Services, Inc., which is a division of LandAmerica Financial Group, Inc.

Conclusion and Recommendation

Based upon the record and the information presented at the IFF, we recommend Bazianos' application for a broker's license be approved, contingent upon Bazianos entering into an Agreement for Licensure. Bazianos would be issued an associate broker's license to be placed under the supervision of a principal broker until March, 2005.

By: _____

R. Schaefer Oglesby
Presiding IFF Board Member
Real Estate Board

Date: _____

By: _____

Herman Key, Jr.
Assisting IFF Board Member
Real Estate Board

Date: _____

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

REAL ESTATE BOARD

**RE: JERRY LEROY DRETSCH
LICENSE NUMBER: 0225 052528**

FILE NUMBER: 2003-00356

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on December 17, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Jerry Leroy Dretsch, on November 18, 2003. The following individuals participated at the conference: Jerry Leroy Dretsch; Respondent; Robert Burch, Witness; Helen Nachman, Witness; Janet Creamer, Investigator; Douglas W. Schroder, Staff Member; R. Schaefer Oglesby, Presiding Board Member; and Herman Key, Jr., Assisting Board Member. Additionally, Andrea Detwiler, Complainant, participated by telephone.

Background

On August 7, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint dated August 1, 2002, from Andrea Detwiler (Detwiler) against Jerry Dretsch (Dretsch) regarding Detwiler's attempt to lease/purchase 4308 Cinnamon Ridge Drive, Virginia Beach, Virginia 23462 in September 2001.

Summation of Facts

1. On or about May 7, 2001, Irish Kuwahara (Kuwahara) entered into an Exclusive Right to Sell Agreement with Century 21 Nachman Realty (the firm), by Dretsch as listing agent for 4308 Cinnamon Ridge Drive, Virginia Beach, Virginia 23462.
2. On or about September 14, 2001, Detwiler entered into a written lease/purchase offer with Kuwahara for 4308 Cinnamon Ridge Drive through Century 21 Nachman Realty as Listing Firm, by Dretsch as listing agent, and William E. Wood as Selling Firm, by Detwiler as selling agent/buyer. On or about September 15, 2001, Dretsch wrote, "Verbal Acceptance by Phone 15 Sep 2001," on the offer after having telephone communication with Kuwahara in Nevada.
3. On September 17, 2001, Detwiler gave Dretsch \$1,500.00 in cash, representing a \$50.00 earnest money deposit to be held by Century 21 Nachman Realty, and \$1,450.00

representing a security deposit, rent for September and October 2001, less a credit for cleaning deposit to be held by the seller.

4. Dretsch deposited \$1,350.00 of the \$1,500.00 into his own personal checking account. Dretsch wrote his own personal check #4174, payable to Kuwahara, dated September 18, 2001, in the amount of \$1,350.00, which represented payment for the security deposit and rental proceeds for September and October 2001. Dretsch attached the remaining \$150.00 in cash, (\$50.00 earnest money deposit and \$100.00 for potential repairs to the air-conditioning unit), to the written offer and placed it in the file at the firm.

5. On September 17, 2001, Dretsch gave Detwiler the keys to the property. Dretsch sent the offer by Airborne Express to Kuwahara on or about September 21, 2001. Kuwahara received the offer on or about September 24, 2001. Detwiler had access to the house on September 17, 2001, and she moved into the house on or about September 19, 2001.

6. On or about September 24, 2001, Kuwahara notified Dretsch of some additional information and concerns he had regarding the lease/purchase offer. On or about September 27, 2001, Kuwahara notified Dretsch that he would only entertain an offer, which was for a complete and unencumbered sale of the property and that no other disposition of the property was acceptable.

7. Detwiler remained in the property until May 2002. From November 2001 through March 2002, Detwiler wrote checks for her rental payments payable to Kuwahara, but delivered them to her attorney or the seller's attorney. During this time, Kuwahara initiated legal proceeds to have Detwiler evicted from the property.

8. Dretsch failed to safeguard the interest of the public and engaged in improper conduct when he allowed Detwiler access to the property prior to obtaining a ratified lease or contract.

9. During the investigation, the Board made repeated attempts to contact Kuwahara for additional information, but no response was ever received.

Conclusion and Recommendation

Count 1: 18 VAC 135-20-320(5) (Effective January 1, 1999)

Dretsch's actions in commingling funds is a violation of Board Regulation 18 VAC 135-20-320(5). During testimony, Dretsch explained his actions at the time he received the \$1,500.00 in cash from Detwiler. In an effort to expedite the disbursal of the money to the seller, instead of taking three days to run it through escrow, Dretsch deposited \$1,350.00 of the cash into his personal account and wrote a check payable to the seller. Dretsch then sent the check airborne express to the seller. We do not believe that he had any intention to do anything illegal or unethical, but merely used bad judgment in trying to expedite the transaction. Therefore, we recommend a monetary penalty of \$75.00 be imposed.

Count 2: 18 VAC 135-20-260(8) and (9) (Effective January 1, 1999)

Dretsch's failed to safeguard the interest of the public and engaged in improper conduct when he allowed Detwiler access to the property prior to obtaining a ratified lease or contract is a violation of Board Regulation 18 VAC 135-20-260(8) and (9). It was very apparent to us that Dretsch had cleared verbally the contract with the seller and was doing his best to help the buyer by moving her in as quickly as possible to meet her requirements. There was no attempt on the part of Dretsch to do anything illegal or unethical. His mistake was in not waiting for the written contract. Prior to receiving a ratified contract, the seller had a change of heart and did not want to lease the property. Several attempts were made to speak with the seller, however, no response was received. Therefore, we recommend a monetary penalty of \$150.00 be imposed.

By: _____

R. Schaefer Oglesby
Presiding IFF Board Member
Real Estate Board

Date: _____

By: _____

Herman Key, Jr.
Assisting IFF Board Member
Real Estate Board

Date: _____


FINAL ORDER RECOMMENDATION

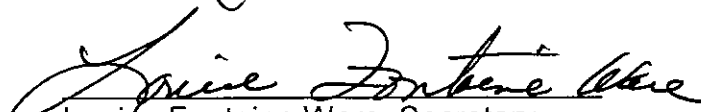
THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 0225 052528 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

- | | | |
|-----|--|--|
| 4. | Tommy Ray DeWitt
File Number 2002-03037 (Disc) | Tommy DeWitt – R
Richard M. Livingston - AT
Don & Maggie Talley – C
Janet Creamer – I |
| 5. | Sandra C. Grogan
File Number 2003-00266 (Disc) | Grogan – R
Richard M. Livingston - AT
Don & Maggie Talley – C
Janet Creamer – I |
| 6. | Kathleen Marie Kennedy
File Number 2004-01919 (Lic) | Kennedy – A
Catherine Mussett - W |
| 7. | Dolores S. Bujalski
File Number 2004-01918 (Lic) | Bujalski – A
Jo Miller - W |
| 8. | Mary K. Brady
File Number 2003-01095 (Disc) | None |
| 9. | Konstandenos S. Bazianos
File Number 2004-01921 (Lic) | Bazianos – A
Jack E. Kotvas, AT |
| 10. | Jerry Leroy Dretsch
File Number 2003-00356 (Disc) | Dretsch – R
Andrea Detwiller – C by phone
Robert Burch – W
Helen Nachman – W
Janet Creamer – I |

The meeting adjourned at 5:20 p.m.

Virginia Real Estate Board


S. Ronald Owens, Chairman


Louise Fontaine Ware, Secretary

STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT

TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government

1. Name: Herman Key, Jr.
2. Title: Member
3. Agency: Real Estate Board
4. Transaction: Informal Fact-Finding Conferences on December 17, 2003
5. Nature of Personal Interest Affected by Transaction: NONE

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Signature

Herman Key, Jr.

Date

December 17TH, 2003

STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT

TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government

1. Name: R. Schaefer Oglesby
2. Title: Member
3. Agency: Real Estate Board
4. Transaction: Informal Fact-Finding Conferences on December 17,
2003
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Signature

R. Schaefer Oglesby

Date

12-17-03